

MEMORANDUM

Re: Peabody Community House, Inc.

Peabody Community House, Inc. is a corporation organized for educational and charitable purposes under the terms of what is now C. 180 of the General Laws.

The By-Laws of the corporation were revised and amended in 1946 and an examination of the records of the corporation discloses no subsequent amendment. The By-Laws provide for a President, Vice-President, Clerk, Treasurer, Financial Secretary, and a Board of fifteen (15) Directors who collectively shall comprise a Board of Managers. Voting membership in the corporation includes the original incorporators and those persons elected from time to time to be voting members by a majority of the Board of Managers at any meeting thereof. The records disclose that certain persons have been from time to time duly elected to be voting members. Article VI of the By-Laws provides that a quorum at a meeting of the corporation shall be fifteen (15) members and a quorum at a meeting of the Board of Managers shall be five (5) managers. The corporation has been inactive for some years, and it is now desired to revive the corporation for the purpose of applying certain accumulated funds belonging to the corporation for purposes similar to the original purposes of the corporation. There are two ways that this can be accomplished:

1. General Laws, C. 180, Sec. 10 provides that by two-thirds ($\frac{2}{3}$) vote of persons legally qualified to vote in meetings of a corporation organized under C. 180, the purposes for which the corporation is formed may be added to or changed providing the new purposes comply with Sec. 2 of C. 180. Thus, if it is possible to hold a meeting at

which two-thirds (2/3) of the living voting members vote in favor, the purposes of the corporation may be altered, providing, of course, in the case of this corporation, that there are at least fifteen (15) members voting because of the quorum requirement. It appears that members of a charitable corporation may legally vote by proxy if the By-Laws so provide (5 Op. A. G. 185). It would also seem possible that if there are not fifteen (15) living members of the corporation but there are five (5) living managers, a special meeting of the Board of Managers could be held to elect a sufficient number of voting members of the corporation to permit two-thirds (2/3) vote in favor of the proposal. The By-Laws (Article III) provide that officers and managers shall hold office until their successors are chosen so that the last elected Board of Managers would be the currently effective one. Either the meeting of the members of the corporation or the Board of Managers, if called and presided over by a person presuming to act with the acquiescence of the others taking part, will be a legal meeting although the person so acting has never been formally elected, appointed, or authorized so to act (Fletcher, Cyclopedia of Corporations, Sec. 2013).

2. If it shall prove to be impossible to accomplish the desired change by the above method, the corporation may then proceed under the terms of General Laws, C. 180, Sec. 11, as last amended by Acts of 1947, C. 559, Sec. 5, as set forth:

"ADDITION TO OR CHANGE OF PURPOSES OR CHANGE OF NAME.--A corporation organized under general or special laws for any of the purposes specified in section two, if unable to comply with section ten of this chapter or section ten of chapter one hundred and fifty-five, may petition the commissioner of corporations and taxation, hereinafter called

the commissioner, for an addition to or change of purposes or for a change of name, as the case may be. The petition shall contain a list of the officers and members of the corporation, so far as they are known, with their addresses; shall state why the section in question cannot be complied with and the additional or new purposes or the name proposed to be adopted by the corporation. It shall be signed and sworn to by the president or one member of the board of directors. The commissioner may require the petitioner to give him information as to what attempt, if any, has been made to secure the approval of two-thirds of the members, or of such proportion thereof as the agreement of association or by-laws of the corporation may prescribe, for the proposed addition to or change of purposes or for the proposed change of name. The commissioner may also require any other information which may assist in determining the matter before him. He may direct the petitioner or the officers of the corporation to give any further notice to the members thereof of the proposed addition to or change of purposes or change of name and to report to him the result of such notice. If the commissioner is satisfied that the proposed new or additional purposes or the proposed name of the corporation is approved by such members thereof as have expressed an opinion in relation thereto, or of a reasonable proportion thereof, he shall, in the case of a change of name, endorse his approval on the petition, or, in the case of an addition to or change of purposes, if he finds that the additional or new purpose is authorized by said section two, he shall so endorse his approval, and thereupon the petition shall be filed in the office of the state secretary, who shall, in the case of a change of name, direct publication thereof and grant a certificate of name as provided in section ten of said chapter one hundred and fifty-five. No petition hereunder for

a change of name of a corporation subject to section twenty-six shall be considered by the commissioner until after such change of name has been approved by the state secretary. (1937, 151, par. 2, appvd. March 29, 1937; 1947, 559, par. 5, appvd. June 20, 1947.)"

Although the petition referred to in Section 11 is brought in behalf of the corporation, it would appear that the petitioner may be the president or one member of the Board of Directors who will sign and swear to the petition and provide such other information as is necessary. This method would seem to be the simplest way of proceeding; and although it is not clear exactly what purposes the funds will be devoted to, it would seem that Sec. 2 of C. 180 is sufficiently broad so that any reasonable civic, educational, charitable, benevolent, or religious purposes may be adopted.